

**REPORT OF THE COLORADO STATEWIDE  
PLANNING GROUP TO THE  
LEGAL SERVICES CORPORATION**

**September 28, 1998**

# **REPORT OF THE COLORADO STATEWIDE PLANNING GROUP**

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### ***Exhibits***

1.	Report of the Colorado Legal Services Planning Group (prepared 10/31/95)
2.	Legal Services in Colorado—A Technology Review (September 1998)
3A.	Report of the Legal Services/Pro Bono Committee of the Judicial Advisory Council (June 1998)
3B.	First Report of the Legal Services/Pro Bono Committee of the Judicial Advisory Council (July 1998)
4A.	Report of the Committee of Chief Judges on Litigants Without Lawyers (February 12, 1998)
4B.	Judicial Advisory Council's Committee on Pro Se Litigants Final Report (April 1998)
5.	Members of Statewide Planning Group

## **REPORT OF THE COLORADO STATEWIDE PLANNING GROUP**

### **INTRODUCTION**

The goal of the planning process described herein is also the LSC's goal: economical and effective delivery of high quality legal services to eligible clients within an integrated delivery system that addresses their most pressing needs. We will first describe the planning accomplished since receipt of Program Letter No. 4, dated August 31, 1995, and then take up each of the questions presented by Program Letter 98-1. A report on the early work of this Planning Group was made to LSC on October 31, 1995, and is attached as Exhibit 1.

Colorado has three federally funded legal service programs (as compared to four geographical and one statewide support program in 1995). These are: Legal Aid Society of Metropolitan Denver ("LASMD"), Pikes Peak/Arkansas River Legal Aid ("PPARLA") and Colorado Rural Legal Services, Inc. ("CRLS"). Each is responsible for a territory within the state which arises from the history described in Exhibit 1.

In September, 1994, the Colorado legal services programs then receiving LSC funding joined with the Colorado Lawyer Trust Account Foundation (Colorado's IOLTA program known as "COLTAF") and the Legal Aid Foundation of Colorado (Colorado's statewide voluntary funding program), to form a Statewide Planning Group with representation from the federally funded programs, the organized bar, the judiciary, persons eligible to be clients, COLTAF, the Legal Aid Foundation, and other groups interested in provision of legal and related services to low-income persons. The Planning Group has remained in existence and continued its efforts, including the preparation and submission of this response to Program Letter 98-1, as supplemented by Program Letter 98-6.

The Statewide Planning Group was initially divided into three committees to deal respectively with: (i) effective delivery of legal services by the federally funded programs, (ii) expansion of pro bono services and coordination of such services with other legal service providers, and (iii) development of additional funding. Although the entire Statewide Planning Group did not continue meeting after late 1995, each committee continued to work until the entire Group was reconvened in March, 1998 in response to Program Letter 98-1. The membership of the Statewide Planning Group has changed somewhat, but its Chair and the Directors of the funded programs have continued to serve. The Planning Group continues to include representations of the Legal Aid Foundation of Colorado, COLTAF, persons eligible to be clients, the private bar, the judiciary, the University of Colorado School of Law, and other organizations interested in the legal problems of low-income persons. Its members are listed in Exhibit 5.

### **ACTIONS TAKEN BY PLANNING GROUP PRIOR TO ISSUANCE OF PROGRAM LETTER 98-1:**

#### **1. Committee on Internal Legal Services Delivery.**

This committee has been chaired since inception by Judge Jose D.L. Marquez of the Colorado Court of Appeals, who was formerly a legal services attorney. Much of its work has been done by the executive directors and staffs of the three LSC-funded legal service programs. These are:

**Program****Director**

Legal Aid Society of Metropolitan Denver (LASMD) Jonathan D. Asher, Esq.

Colorado Rural Legal Services (CRLS) Mario H. Rivera, Esq.

Pikes Peak/Arkansas River Legal Aid (PPARLA) Jerome L. Lemberger, Esq.

The services formerly provided by Pueblo County Legal Services are now performed by Pikes Peak/Arkansas River Legal Aid; and the Native American, and migrant services are under the direction of Colorado Rural Legal Services. Exhibit 1, which is the response given to Program Letter 4, describes the history and staffing of the programs as of October 31, 1995, and the issues which this committee undertook at the time to resolve. These issues correspond closely to questions 1, 2, 3 and 7 of Program Letter 98-1. Throughout its work on increasing the effectiveness and efficiency of delivery of civil legal services, this committee has studied work done in other states to develop models, structures and ideas for potential use in Colorado.

A major component of the committee's work in 1996 and early 1997 was the development of information for the committee's accounting consultants, who were members of the Legal Aid Foundation Board of Trustees. These consultants undertook on a pro bono basis to do an analysis to help the committee develop the best overall organizational structure for the statewide delivery of legal services. Extensive information was gathered from Colorado's three legal services programs by Ms. Meredith McBurney, who was then the Executive Director of both COLTAF and the Legal Aid Foundation of Colorado. This information was provided to the consultants. Their approach, as authorized by the committee, was to ignore the extensive organizational history described in Exhibit 1, and to pursue the best structure for legal aid services in Colorado as if it were being planned from inception with a clean slate.

After substantial work and some delays, the consultants presented their preliminary conclusions at a meeting of the committee on February 26, 1997. Among other things, they presented an inventory of existing resources and a summary of the statistical information which had been gathered concerning the different categories of service provided to eligible clients by each of the three legal service programs. Although the consultants presented a model for centralized statewide case intake, computer networking, and administration, the information available to them from the programs was not sufficient to reach firm conclusions, largely because of inconsistencies among the programs (and even to a lesser extent among different offices of the same program) in categorizing the types of services performed (such as advice, brief service, referral, negotiation, advice plus referral, etc.).

The consultants suggested that the most efficient model might be either a merger of programs or much closer coordination among them, with centralized and shared intake and administration, but were unable to determine whether improved service could be combined with substantial cost savings in such a model without considerable additional factual information concerning the functions, duties and costs of legal and non-legal personnel presently working throughout Colorado for the three legal service programs. As a practical matter, it seemed that no proposal for complete statewide integration (particularly if it involved merging the programs) could be made to the Boards of Directors of the programs without reliable cost estimates and presentation of a detailed plan of action for consideration by each Board.

It was agreed at this February, 1997 meeting that the committee should secure action by the governing Boards of each legal service program to affirm their willingness to proceed with this planning process even though it might result in recommendations for substantial changes.

This was accomplished.

However, it became apparent that a detailed plan of action would require many preliminary steps. The most obviously urgent need would be the upgrading of technology to realize the goals of improved communication, improved use of staff expertise, and efficiency of administration. Arrangements were made to fund the hiring of a technology consultant; and a Request for Proposals for a technology study and report was issued in December, 1997. Several responses were received and consultants were selected in April, 1998. The selected consultants were Tim Plenk of Copacetic Computer (Boston) and Joseph Kelemen and Jim Morrissey of Western New York Law Center (Buffalo). These consultants issued a preliminary report, which (after input from the staffs of the legal services providers) was made into a final written report, which is attached as Exhibit 2.

We will describe later in this Report, the most recent work of this committee in response to Program Letter 98-1.

2. **Committee on Expansion of Pro Bono Services  
and Coordination with Other Service Providers.**

Pro bono legal services for low-income persons are the most important part of the broader category of pro bono service by lawyers. In 1996, pro bono lawyers served 3,000 to 5,000 clients in Colorado, as compared to approximately 27,000 clients served by the legal services programs. Planning and encouragement of pro bono services have been carried out historically by the state and local bar associations, with support from the Colorado Supreme Court and the three legal services programs. Twenty-four of Colorado's twenty-seven local bar associations have created and supported pro bono programs with planning and other ongoing assistance from the Colorado Bar Association's Department of Public and Legal Services. These programs administer and assign direct client representation to volunteer lawyers. The three legal service programs provide intake support through several of their offices, and in some cases provide administrative management of local bar association programs. For example, in the Denver area the Metro Volunteer Lawyers (formerly known as the "Thursday Night Bar") assigns volunteer private pro bono attorneys to assist low-income persons referred by the Legal Aid Society of Metropolitan Denver. Eight communities and two projects are also served by volunteers in Lend-A-Lawyer, Inc., who receive a living allowance stipend funded by court appointment fees and by reimbursements from CRLS and LASMD, in whose offices some of the volunteers are located. There are also specialized groups in local communities providing pro bono services, including domestic violence shelters and advisory organizations, children's advocacy groups and special purpose bars. In addition, legal forms are distributed by courts, libraries and community organizations to help low and moderate income persons to help themselves.

Exhibit 1, which is the response to Program Letter No. 4, describes delivery systems for pro bono services in existence in 1995, together with improvements planned or recommended at that time. Although the 1995 report was drafted by the committee of the Statewide Planning Group co-chaired by Judge Daniel M. Taubman of the Colorado Court of Appeals and Jo Ann Viola Salazar, Esq. of the Colorado Bar Association, the principal planning vehicle for more recent efforts has been the Legal Services/Pro Bono Subcommittee of the Colorado Supreme Court's Judicial Advisory Council. This Subcommittee and the Planning Group committee have overlapping membership, including Judge Taubman, Jo Ann Viola Salazar, Jon Asher, Walter W. Garnsey and the Subcommittee's co-chair, Edwin S. Kahn.

The Legal Services/Pro Bono Subcommittee has submitted a report to the Judicial

Advisory Council, which considered the report on June 12, 1998. This report made four recommendations, two of which (relating to increasing funding and creation of standing pro bono committees) were adopted and two of which (relating to mandatory pro bono work and to statewide reporting of pro bono work) were favored by straw votes of the Judicial Advisory Council, but deferred pending additional education of the private bar and consideration by state and local bar associations. Exhibit 3A ("Report of the Legal Services/Pro Bono Committee of the Judicial Advisory Council") is the report originally made by the subcommittee, as slightly revised in July 1998. Exhibit 3B ("First Report of the Legal Services/Pro Bono Committee of the Judicial Advisory Council") is taken from Exhibit 3A, but relates only to the two recommendations approved by the Judicial Advisory Council for action by the Colorado Supreme Court. In summary, Exhibit 3B has been approved by the Judicial Advisory Council for consideration by the Colorado Supreme Court and Exhibit 3A adds necessary background and arguments relating to the two recommendations being deferred for further discussion.

The recommendations contained in these Exhibits and the actions taken thereon are described *infra* in this report's response to Question 5 of Program Letter 98-1.

### **3. Committee on Development of Additional Funding.**

This committee has been chaired from its inception by Walter W. Garnsey, Esq. We have set forth below an update of the progress made in private funding, and the efforts to secure public funding during 1995-98.

Congressional funding cuts for LSC have reduced Colorado funding for legal services programs by approximately \$1.2 million starting with the 1996 federal fiscal year. In response to these cutbacks, the original funding committee expanded into an informal coalition of interested groups which has undertaken extensive efforts beginning in the fall of 1995 directed toward replacing this lost \$1.2 million. This coalition has consisted of representatives from the Legal Aid Foundation, COLTAF, and the Colorado Bar Association, each of which has also contributed substantial financial assistance, and of representatives from the private bar, the legal services providers, the courts, and Colorado's two law schools. Volunteers and staff from these organizations and groups have worked extremely hard, committing significant time and energy to these efforts.

#### **Private Fundraising**

The Legal Aid Foundation was formed in 1981 as the statewide fund-raising arm for what were then Colorado's four LSC funded legal services programs. Colorado pioneered this statewide, coordinated fundraising model, which has been adopted by several other states.

In the face of the major LSC funding cuts, the Legal Aid Foundation increased its 1995-96 campaign target "per attorney" contribution level from \$125 to \$200 for Denver law firms and continued its extensive fundraising solicitations with a primary focus upon individual lawyers, law firms, and corporate and governmental law departments. Approximately 60 attorneys solicit their peers at over 100 Colorado law firms. The Denver area campaign is directed by a steering committee of approximately 8 to 10 lawyers who oversee teams of volunteers. Similar smaller campaigns are conducted in Colorado Springs, Boulder and Fort Collins.

During the Legal Aid Foundation's 1997-98 fiscal year, its principal goals were to preserve and maximize existing funding sources and to diversify funding sources. With regard to the first goal, there was a strong focus on major individual gifts, as well as on areas of untapped

potential, such as Boulder County. These two areas brought in approximately \$40,000 more than in the previous year. In addition, the Denver Area Law Firm Campaign achieved an increase of approximately 4%, or approximately \$13,000 over the previous year. In pursuing the new sources of funding, the Legal Aid Foundation focused primarily on foundation grants and companies that do business with the legal community (for example, accounting firms). These sources contributed an additional \$18,500 in the 1997-98 campaign.

Overall these efforts have produced the following results in relation to the base year of the 1994-95 campaign:

<u>Campaign Year</u>	<u>Gross Contributions</u>	<u>Net Distributions to Legal Services Programs</u>
1994-95	\$435,000	\$300,000
1995-96	\$509,000	\$364,000
1996-97	\$528,000	\$419,000
1997-98	\$601,000	\$499,000

The net distributions by the Foundation in 1997-98 were approximately 9% of the budgets of the legal service programs. Funds are distributed based on the poverty population of each program's service area. The breakdown of the Foundation's funding sources is approximately as follows: law firms – 59%; individuals – 33%; and others (private foundations, companies, events) – 8%. The Foundation has built on its success: its income has increased each year, and its 1997-98 percentage ratio of distributions to receipts was the highest in many years and perhaps the highest in any year since its inception.

For the 1998-99 fiscal year, there are several positive developments regarding targeted additional increases in the Legal Aid Foundation's fund-raising efforts: the Foundation board of trustees recently approved an increase of the Denver law firm "per attorney" contribution target from \$200 to \$250 for the 1998-99 campaign; the Colorado Bar Association approved a donation of approximately \$30,000 in credit card sponsorship proceeds to be split between the Foundation and COLTAF; and the Rose Foundation approved a \$15,000 challenge grant.

### IOLTA Funding

COLTAF was established in 1982 as a voluntary program and was the fifth IOLTA program in the country. In its 16 years, COLTAF has made grants totaling over \$11 million.

Regarding grants to legal services programs, COLTAF as a voluntary program made total grants as high as \$445,000. In its first full year as a mandatory program in 1990-91, COLTAF granted \$1,076,000 to the legal services programs. However, low interest rates reduced COLTAF revenues during the next few years. The past three years of grant history are:

1995-96	\$822,100
1996-97	\$822,100
1997-98	\$897,000

In addition, COLTAF has historically funded two other areas: pro bono programs and other law-related charitable organizations (discretionary grants) providing critical legal services to the disadvantaged. Pro bono and discretionary grant totals have ranged from \$65,000 to \$137,000 and \$45,000 to \$137,000, respectively, during COLTAF's history, depending on interest rates and on the pressure to fund the increased needs of the legal services programs arising from reduced federal funding. These categories outside the legal service programs



received \$202,400 in COLTAF funding in 1997-98.

During 1997-98, the COLTAF board of directors and staff continued their efforts to persuade financial institutions to waive fees on COLTAF accounts. As a result, nine additional banks have agreed to waive fees totaling approximately \$37,000 annually. COLTAF is currently in discussion with two additional larger institutions about such waivers.

COLTAF is, of course, concerned about the jeopardy to all IOLTA programs which may arise in the wake of the Supreme Court's decision in *Phillips v. Washington Legal Foundation*, 118 S. Ct. 1925 (1998)

### Registration Fees and Public Funding

The 1996 efforts of the informal fundraising coalition focused on two sources of possible new funding for the legal services programs – the state legislature and an increase in attorney registration fees, which are established by the Colorado Supreme Court.

In early 1996, the Board of Governors of the Colorado Bar Association adopted a resolution asking the Colorado Supreme Court to increase annual attorney registration fees in order to raise money both for the legal services programs (80% of the increase) and for an attorney health program (20% of the increase). The proposed increase was \$25 for active attorneys admitted more than 3 years, \$15 for active attorneys admitted fewer than 3 years, and \$35 for inactive attorneys under age 65. It was projected that the increase would raise approximately \$350,000 annually for the legal services programs and would help demonstrate to the state legislature and the public the commitment of lawyers to civil legal justice. In the fall of 1996, the Supreme Court rejected the attorney registration fee proposal explaining, among other things, that it was not then prepared to increase attorney registration fees for any purpose other than attorney regulation. No further efforts have been made since 1996 to raise funds for legal services to low-income persons through increased attorney registration fees.

The 1996 state legislative initiative was a bill to increase county court civil filing fees by \$6, with the funds being earmarked for the legal services programs. This \$6 increase would have increased plaintiffs' fees to \$36 and defendants' fees to \$32. Colorado's county courts have a \$10,000 jurisdictional limit. The coalition decided to pursue only an increase in county court fees because the legislature had recently increased filing fees in the district courts (the courts of general jurisdiction) in order to fund judicial pay increases. The county court increases were projected to raise approximately \$1.1 million for the legal services programs. Opponents of the county court filing fee bill included landlords and collection agencies that heavily use the county courts, as well as individuals and some county court judges who believed that it was bad policy to increase costs for dispute resolution in the limited jurisdiction courts. The bill passed the Senate and the House Judiciary Committee, but was defeated in the House Appropriations Committee.

A serious obstacle to both additional appropriations and the development of additional public revenue sources in Colorado is the "Taxpayers' Bill of Rights" ("TABOR") Amendment adopted by Colorado voters as a constitutional amendment. The TABOR Amendment (i) restricts increases in overall appropriations to those directly reflecting population growth and inflation, thereby making it impossible to spend revenues exceeding the amount so determined (such as those arising from application of existing tax laws in times of economic prosperity) without a vote of the people and (ii) forbids imposition of new taxes without a vote of the people. Some legislators have expressed the opinion, or at least concern, that the second of these limits would prevent increases in court filing fees by legislative action. It cannot yet be determined whether elimination of that concern by repeal or by a more restrictive interpretation of TABOR would open the way to approval of increased filing fees.

The coalition made another state legislative effort in 1997, but changed the bill in two significant ways. It abandoned court filing fee increases and, instead, sought a \$1 million general fund appropriation. Additionally, it limited the proposed use of the funds to providing civil legal services to indigent victims of family violence. In spite of an intense lobbying effort that included key representatives of law enforcement agencies (e.g., the Colorado District Attorneys Council and the Colorado Association of Chiefs of Police), and the domestic violence prevention community, the ultimate fate of the 1997 bill was unfortunately identical to that of the 1996 bill. The TABOR Amendment was again an obstacle for funding any appropriations for new programs and several key conservative legislators continued to oppose any state funding for civil legal services.

In 1998, the coalition undertook a third legislative effort. The legislative working group added two experienced lobbyists to its membership (supplementing the substantial assistance given in all three years by the Colorado Bar Association's staff lobbyist) and began developing support from the Republican leadership of the Colorado General Assembly. Those early efforts resulted in some changes to the 1997 legislation, but retained the objective of obtaining funding for civil legal services to indigent victims of family violence. The major change to the 1998 bill was to raise funds by imposing a mandated fee on those convicted of crimes of family violence. It was estimated that this funding mechanism would ultimately make available \$1 million annually for providers of legal services. While there was some initial support for the funding mechanism, the Joint Budget Committee of the legislature ultimately decided that such fees would also be subject to the TABOR Amendment. The coalition then sought approval of the new funding mechanism concept with the understanding that monies would not be appropriated until 1999. That effort passed in the House Judiciary Committee but was defeated in the House Appropriations Committee.

## **ANSWERS TO PLANNING QUESTIONS:**

- 1. How are intake and delivery of advice and referral services structured within the state? What steps can be taken to ensure a delivery network that maximizes client access, efficient delivery, and high quality legal assistance?**

### **Present Structure:**

Each of Colorado's three legal service programs has its own system for intake and delivery of advice and referral services. All provide for clients to walk into the office directly or contact the office by telephone. The present structures reflect in many respects the needs of the population. A significant number speak languages other than English, including particularly Spanish.

The Legal Aid Society of Metropolitan Denver serves a low-income population of approximately 190,000 in eighteen counties, including the Northwest Colorado Legal Services Project which services eleven rural counties. It has offices located in Denver, Boulder, Jefferson County, Frisco, Leadville, Steamboat Springs and Gunnison. Staffing in offices varies with the size of population being served. For example, in the Denver office, there are fourteen attorneys, seven secretaries, and twelve paralegals and in Boulder there is one attorney, one secretary, and one volunteer coordinator. The other offices are served chiefly through the assistance of a coordinator or a paralegal. Days and hours during which new clients can contact the offices vary. For example, in the Denver office, telephones are answered Monday through Friday from 8:30 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. Intake is from Monday through Friday from 9:00 a.m. to 11:30 a.m. In Jefferson County telephones are answered Monday through Friday from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m. Intake is by calls for

appointments, although walk-ins will be accepted on an emergency basis.

LASMD's Denver office is organized into five substantive units: Housing/Homelessness Prevention, Family/Children, Health/Elder Law, Litigation and Intake. Almost all of the client intake conducted by the Denver office is done by the staff and volunteers of the Intake Unit. Client interviews are primarily conducted by telephone.

All calls to the Denver office are answered by a Voice Mail system. Those callers who are calling for help with a legal problem select from a set of choices for callers 60 and over, or under 60. Callers 60 and over will be transferred to the receptionist; callers under 60 remain in the voice mail system and select from another set of choices.

Those callers who are seeking help with a domestic matter will be directed to leave their name and a telephone number where they can be reached by telephone during the day. Names are retrieved from the voice mail system several times each day, and the information is entered into a "caller" database, printed out, and placed in a central location for staff and volunteer paralegals. These paralegals call the clients back and interview them about their legal problems.

Callers who are seeking help with a non-domestic legal problem will be transferred to the receptionist. [The receptionist will also receive a number of calls from callers with domestic problems who choose not to or cannot use the voice mail system.] A basic screening for financial eligibility and type of problem is done by the receptionist. If clients appear to be financially eligible and are calling about a type of problem that LASMD can review, the receptionist takes their names and telephone numbers where they can be reached by telephone during the day. That information is entered into the "caller" database referred to earlier, and the information is gathered by staff and volunteer paralegals to complete client interviews as described above.

Client names are accepted by telephone throughout the day. Volunteer paralegals return client calls until approximately 2:30 each day (*see* information about case review below); staff paralegals return calls throughout regular business hours. Clients can also have a face-to-face interview with a paralegal during the hours of 9:00 - 11:30 a.m., Monday - Friday. Paralegals will interview walk-in clients with emergency issues or who cannot be reached easily by telephone on an as-needed basis.

Intake paralegals use questionnaires developed by the Intake Unit to gather financial and statistical information from all potential clients, and obtain the necessary facts regarding the client's legal problem. In emergency situations, the paralegal will consult with the Intake Unit Supervising Attorney in order to determine whether immediate action needs to be taken on the client's problem, whether additional information is needed, etc. Volunteer paralegals do daily case reviews with the appropriate staff person (Supervising Attorney for non-domestic issues; staff paralegal for domestic issues) who decides what happens with the client's case. Possible dispositions include: advice from the Intake Unit attorney or paralegal; referral to one of the other substantive units for further review, advice, representation or rejection; referral to Metro Volunteer Lawyers (a no fee and low fee referral program of the Denver Bar Association); rejection (case is not within LASMD's protocol, client is over the income limit, limited resources, etc.); referral to a *pro se* clinic; referral to a private attorney through a referral panel administered by LASMD.

Each person who contacts Legal Aid for assistance, and for whom an intake interview is completed is contacted again within 48 hours after the intake interview by letter or telephone. All clients who are rejected by the Intake Unit staff are informed in writing; those letters are mailed out 24 hours after the interview. Most of the clients who are determined to be over the income limit during their interviews are informed immediately during the interviews; this

information is confirmed in letters mailed out 24 hours after the interview.

In Boulder, basic screening is usually done by the receptionist by telephone before a client is scheduled for an in-person intake appointment, either in the BCLS office in Boulder or another Boulder County location. Clients are asked to complete the application and then meet with a volunteer paralegal who reviews the financial eligibility of each client and obtains necessary facts concerning the client's legal problem. In Boulder, while the client is at the interview, the volunteer paralegal discusses the case with the staff attorney in order to determine if there are additional questions or issues.

Subsequent to the intake interviews, at a "case review" in Boulder, the paralegals present a final report on the cases to the staff attorney and a decision is made as to whether the client needs an attorney, needs only information advice, is referred to a BCLS clinic, or should be referred to an other source for assistance. Clients receive immediate feedback whenever possible. The office is able to build the case file immediately as clients are asked to bring in any documents relating to their file. This is especially useful when the case will be directly referred to a pro bono attorney.

The Northwest Colorado Legal Services Project covers eleven counties. It handles intake primarily through a toll-free telephone number (although the system is the same even if they contact a local office first). The initial procedures for callers to the toll-free telephone line are outlined on a "telephone procedures" sheet. Once that process has been completed, applicants who appear to qualify and whose problem is within LASMD guidelines will be told where they can pick up an application.

Unless a client has an emergency situation, the Project does not take applications over the phone, as this would tie up the toll-free telephone unnecessarily. Application forms are kept at local libraries throughout our eleven-county area, so that potential clients can get their paperwork started the same day that they call. Five types of application packets are available: (1) divorce/custody; (2) landlord/tenant; (3) defendants in civil court cases; (4) bankruptcy; (5) other.

By combining an accessible telephone service with local availability of application materials, the Project has speeded up the time between first contact with a client and disposition of the client's case. This system works well in a multi-county area with many geographical barriers. The Project maintains information at the toll-free telephone regarding local resources and agencies so that it can help persons whose income or type of case does not qualify under LASMD guidelines. Available materials include the Legal Aid Help Book, which is available in every library within the eleven-county territory.

The Pikes Peak/Arkansas River Legal Aid program serves a population of approximately 70,000 low-income persons located in seven counties. It has offices in Colorado Springs, Pueblo and Salida. The Colorado Springs office has five paid attorneys, one volunteer attorney, eight paralegals, and eight support staff. The Pueblo office has four attorneys, three paralegals and two support staff. In all three offices, clients may contact the offices on Monday, Wednesday, Thursday and Friday from 8:30 a.m. through 12:00 noon and from 1:00 p.m. through 5:00 p.m. On Tuesdays they can telephone the office from 11:00 to 12:00 noon and from 1:00 p.m. through 5:00 p.m. Intake is conducted during these time periods.

Walk-in intake is also performed during these periods in Pueblo and Colorado Springs. In the Salida office, walk-in intake is restricted to six hours per week.

Prospective clients may make contact in two ways, either over the telephone via centralized toll-free telephone intake system based in the main office in Colorado Springs, or simply walking into one of the offices. The receptionist performs a preliminary screen to

determine if further intake is to be completed by a paralegal or attorney. There is a detailed referral list for each rejected case to give rejected prospective clients the opportunity and necessary information to seek available service from another source.

If the prospective client passes this preliminary screen, the receptionist informs the client that his or her case will be assigned to a paralegal or an attorney. This feed-back normally is conveyed within 3-5 minutes of initial contact. If the client is not rejected, the receptionist enters preliminary client and case type data into the central data base maintained by PPARLA. A preliminary conflict check automatically follows and the results are communicated to the paralegal or attorney.

In emergency cases, a paralegal or attorney will speak to the prospective client within 24 hours, and often immediately. Non-emergency cases are placed on a waiting list for later action. During intake, the paralegal or attorney will speak with the client, often by telephone, and conduct a more detailed interview and analysis of the case. If the case is within the program's priorities and income eligibility guidelines, or an exception has been made, the case is accepted for further service. In appropriate cases, counsel and advice are provided during the intake contact. Other legal services are performed either by one of Pikes Peak's staff, or by a pro bono attorney from one of the pro bono panels Pikes Peak administers.

Colorado Rural Legal Services serves a population of approximately 113,000 low-income persons located in 38 counties. The program also serves a significant Native American and migrant worker population. At one time it had offices in Denver, Fort Morgan, Greeley, Ft. Collins, La Junta, Trinidad, Alamosa, Durango, Montrose, and Grand Junction. It recently closed offices in Montrose and Trinidad. Staffing in the continuing offices varies. In the Larimer County office there are three attorneys, two secretaries, and two paralegals. By contrast, in the Trinidad office there is one attorney and a part-time secretary. Staffing of the offices in these rural areas is based in part on an effort to provide clients direct contact with attorneys and trained legal staff and an awareness of the need for local input and resources.

A client can access the CRLS intake process by walking into a CRLS office, telephoning the office, or by mail. Access by mail almost always requires follow-up because usually there is insufficient information to determine eligibility. The intake procedure differs from office to office; however, they all have the common goal of providing unlimited access to emergencies and responding to the applications for service as soon as possible. All of them have specified days and hours when routine intake can be provided. Staff members in several offices circuit ride to locations where there are no offices, including the Southern Ute and Ute Mountain Ute Reservations. Counsel and advice or brief service are provided when appropriate at the time of intake; and referrals to other sources of assistance are given to rejected clients whenever feasible.

The Migrant office provides legal services to migrants and farmworkers throughout the whole state. During June through August, four summer interns are hired and placed in each of the four areas of highest concentrations to visit with the workers and do intake. During the nine other months, intake is done through the use of a toll-free number to the Denver migrant office.

Services are also provided through coordination with other resources. In many cases, the only other legal resources available to eligible clients in the CRLS service area are small pro bono programs scattered throughout the service areas. In some areas there is some lay person representation available in veterans' benefits cases. There are some battered women shelters that provide lay person assistance in preparing pleadings for temporary restraining orders.

In the Grand Junction, Durango and Greeley service areas, CRLS works closely with local pro bono programs assisting them in providing service on cases in which CRLS is unable to assist but which fit into priorities established by the local pro bono programs.

In an attempt to bring more pro bono services to the rural areas, CRLS has a written agreement with the Lend-A-Lawyer program whereby CRLS provides office space for an attorney to office in the rural area, and in return, these attorneys spend one-half of the time work on CRLS client cases.

The CRLS migrant unit works closely with various government and private entities that provide services to migrants. Some of these entities are: Council of Churches, Community Health Services, Migrant-Head Start, F.B.I., Migrant Rehab Services, State Department of Labor, Job Services, State Migrant Health Department and U.S. Department of Labor - Wage and Hour Division.

Additional information concerning the services provided by LASMD, CRLS and PPARLA is set forth on pages 7-12 of Exhibit 2.

### **Present Strengths and Weaknesses:**

The principal strength of the existing structure in Colorado is that each program has been able to take into account the needs of the local areas which it serves and develop what it believes is the best way to meet those needs. The principal weaknesses are a lack of uniformity in the scope, efficiency and effectiveness of service delivery throughout the state and the lack of sufficient funding to enable the programs to operate adequately staffed offices geographically near all of the state's eligible potential clients.

### **Goals and Progress:**

As described on pages 2-3, *supra*, the committee, and particularly the directors and staffs of the three programs, have spent considerable time since late 1995 discussing the feasibility of major change. Goals addressed from the outset have included standardizing eligibility guidelines and case reporting, integrating the process for establishing program priorities, improving technology, centralizing intake, improving training and support, sharing resources, facilitating *pro se* representation, and potential integration of programs as other goals are met. Central to all of these issues have been assessments of the costs and benefits involved, together with the diversity, geographical location, and size of the population being served. Throughout its work on increasing the effectiveness and efficiency of delivery of civil legal services, this committee has studied work done in other states to develop models, structures and ideas for potential use in Colorado.

The programs have already standardized income eligibility guidelines at 125% of the federal poverty level. To insure a delivery network that maximizes client access, efficient delivery, and high quality legal assistance, the programs have formed a committee to address how they each gather, classify, and report intake and case information. This committee is developing a model to be adopted by the three programs in the state that will ensure uniformity of intake and case statistics. The committee is currently drafting its report and recommendations for the programs. By the end of this year the programs will act on the recommendations, and adopt uniform standards for intake and case information reporting.

A joint committee has been formed with representatives from all three programs to propose a common system for the establishment of program priorities. This committee's goals include developing common instruments to be administered by a common protocol in conducting an in-depth appraisal of needs within each service area. Additionally, the results of the appraisal will be studied by the committee in order to develop recommended common priorities throughout the state for consideration by each of the programs' Boards of Directors. The

committee currently is putting together final drafts of the appraisal instruments. The protocols have been adopted. The appraisal will be completed in time for the Boards of Directors of the programs to act on the committee's recommendations by end of March, 1999.

A joint merger committee consisting of the three Board chairs, other members of each Board of Directors, the executive directors of each program and other program staff began meeting in early September to resume the service delivery committee's earlier consideration of the benefits and feasibility of merger or consolidation of the federally funded Colorado programs. Regardless of the outcome of that discussion, the programs are working to create, operate and continuously improve a centralized system which will use telephone and computer technology and specialized staff to provide intake and delivery of advice and referral services, and possibly brief services throughout the state. This should make it possible to avoid substantial differences in the quality of service provided to different groups or in different locations, but without losing sight of differences which may exist in the needs of different client populations. Such differences can be taken into account if local offices and clients are given the opportunity to provide meaningful input in the development and operation of the system and if local offices continue to provide local intake for clients best served thereby, either directly or by referrals from, or answers provided through, the centralized system.

The timetable for the installation of the system described above will depend upon the securing of funds sufficient to acquire necessary equipment and software and the time necessary to resolve problems and train personnel, all as discussed in the answer to Question 2 below. The committee believes that full implementation should be step by step, with corrections and improvements being made along the way as improved technology and available staffing permit.

**2. Is there a state legal services technology plan? How can technological capacities be developed statewide to assure compatibility, promote efficiency, improve quality, and expand services to clients?**

**Present Structure:**

Each of the programs has its own computers and software. Many of the computers now in use have become obsolete. There is limited computer networking within the programs and none between the programs. Some, but not all, intake and case management systems are computerized. LASMD has a CD-ROM library and Lexis and Westlaw access; the other programs do not. In summary, each program uses computer technology, but they need much upgrading of equipment and much wider networking before thtatewide delivery system.

**Present Strengths and Weaknesses:**

The technology employed by the programs has developed over time during a period of reduced funding in which primary emphasis has been givile communication and computer technology are being employed in varying degrees by all of the programs, it is difficult to identify any major strengths in the systems being employed, as compared to systems available in the marketplace.

**Goals and Progress:**

Recognizing the need for improved use of technology on a statewide basis, the program directors formed a committee to address their collective technology needs, obtained funding for planning, and, after extensive nationwide advertising, hired consultants, received a preliminary report, discussed successive drafts of that report with the consultants, and received a technology

report (Exhibit 2). The programs will use the technology report in their efforts to improve the efficiency and effectiveness of their delivery of legal services. Exhibit 2 will also be an important tool in obtaining funding for the improvements in technology which it recommends, especially because it contains cost estimates for review by potential funding sources. Separate charts summarizing total proposed costs will be presented to potential funding sources.

The technology report includes: (1) a review of each of the programs' current hardware and software and recommendations for needed improvements; (2) information on costs for the acquisition of hardware and software; (3) a recommended configuration for a statewide network to link all programs and provide network access for entry of information required that would assist in the representation of clients and provide support among the programs; (4) a recommendation for a system for maintaining this system and for training staff; and various other recommendations relating to more effective service delivery.

The goals of improved technology are well set forth on page 5 of Program Letter 98-1:

“ . . . dramatically improve the capacity of staff throughout the state to quickly exchange and share information, improving their ability to stay current with the law, develop legal strategies, write briefs and otherwise serve clients.”

The necessary first step in the design and implementation of a statewide computer network and communication system is the obtaining of necessary funding. With the assistance of Ms. Lynn Cannon, the Executive Director of the Legal Aid Foundation of Colorado, the committee will solicit foundation support to fund a plan of action developed by the legal service programs based on the specific recommendations and cost estimates contained in Exhibit 2. If foundation grants are not received, are insufficient, or require matching funds, efforts will be made to seek funding from COLTAF or other nongovernmental sources.

As funding becomes available, the programs intend to implement goals set forth above incrementally, without necessarily waiting for receipt of enough funding to achieve all of them at one time. Because of the uncertainties in funding, the technical problems that inevitably will arise, and the need to refine the system as dictated by experience, it is not possible to establish a completion date for the statewide technology plan as a whole. However, it is a high priority which will continue to be pursued vigorously by the legal services programs through a combined effort.

**3. What are the major barriers low-income persons face in gaining access to justice in the State? What efforts can be taken on a statewide basis to expand client access to the courts, provide preventive legal education and advice, and enhance self-help opportunities for low-income persons?**

**Present Structure:**

The principal barriers faced by low-income persons generally in Colorado (and nationally) are:

1. The lack of money to gain access to a legal system which requires expenditures of dollars at every step of the way;
2. The lack of sufficient funding for legal services programs to provide services to those who need and cannot afford them;
3. An insufficient amount of pro bono work provided by private attorneys.



There are also many groups in Colorado and elsewhere which face special barriers in access to justice, such as institutionalized persons, including the mentally ill and prisoners, the elderly, the homeless, people unable to leave their homes, and others. Barriers which are particularly important in Colorado include:

### *The Geography of Colorado*

Colorado's area exceeds that of New York, Pennsylvania and New Jersey combined. The highway distances between its towns range up to 600 miles. Air transportation is limited and very expensive. Passenger train service is almost nonexistent. The greatest geographical barrier is the Rocky Mountains, which run north-south through the middle and western parts of the state. There are quite a few areas with significant numbers of low-income persons which are scattered throughout the mountains and can only be reached from metro Denver by expensive air travel or driving over high mountain passes which are particularly dangerous and sometimes impassable in the winter. In both the mountain and plains portions of Colorado, there are significant groups of low-income persons from other low-income groups with intervening areas which are very sparsely populated.

One such area is the southwestern corner of the state which includes the cities of Durango and Cortez and the two Native American reservations in the state. This area has a low-income population of almost 10,000. The west and south boundaries are the states of Utah and New Mexico, and the only highway access from the east and north is over high mountain passes which are dangerous and sometimes impassable in the winter.

Another example is the San Luis Valley. The boundary on the south is the state of New Mexico, and the access from the west, north and east is in all cases over a mountain pass. The low-income population of the San Luis Valley is greater than 10,000 people and the geographic area of the San Luis Valley is equivalent to the state of Connecticut. The CRLS attorney servicing the San Luis Valley currently circuit rides this entire geographic area, traveling to five distant district courts.

### *Native Americans on Reservations*

Reservation residents have specialized legal problems, and many of them lack transportation and have problems leaving the reservations. The Southern Ute Reservation is located about 20 miles from Durango, while the Ute Mountain Ute Reservation is located about 15 miles from Cortez and is very isolated.

Each reservation belongs to a different tribe and is, therefore, a separate nation with each having its own constitutional laws and judicial systems. Representation in the Ute Mountain Ute Court requires separate tribal bar admission.

### *Migrant Farmworkers*

Every spring, an estimated 16,000 to 20,000 migrant farmworkers arrive in the state to work long days in the field six or seven days per week. While in the state, most of these migrant farmworkers reside in inadequate housing, which many times is far from town. They generally have no telephones and poor, if any, access to transportation.

Although migrants are found throughout the state, the greatest concentrations of workers are in four widely separated locations:

- A. Larimer, Weld, Boulder, Adams and Morgan Counties;

- B. Pueblo, Otero and Prowers Counties;
- C. Alamosa, Rio Grande, and Saguache Counties; and
- D. Montrose, Delta and Mesa Counties.

Representation of migrants usually presents at least three problems that are different from, and in addition to, those in the provision of regular legal services:

1. Establishment of communications with a group that is not available during normal office hours, at a significant distance from most legal services offices with no telephone and inadequate transportation.
2. Many of their legal issues involve the Agricultural Worker Protection Act (AWPA) and the Federal Fair Labor Standards Act (FLSA).
3. Much of the actual legal representation of migrant clients necessarily occurs after the client has moved to another location, often in another state.

#### *Need for Unbundled Services.*

Outreach is important in helping low-income persons recognize when they need legal assistance, but because of limited resources, much of the focus must necessarily be on tools for self-help. This has led to encouragement for the unbundling of family law services in which lawyers and clients divide up the necessary tasks. There are organized ongoing programs of this nature in Denver and in Boulder.

A study has recently been made by a committee of chief judges in Colorado concerning the status of litigants without lawyers. A copy of the resulting report, dated February 18, 1998 (excluding exhibits because of their length) is attached as Exhibit 4A. The Committee on Pro Se Litigants of the Judicial Advisory Council has also considered the issues and made recommendations to the Colorado Supreme Court. Its Final Report is attached as Exhibit 4B.

Nearly half of domestic relations cases involve one or more *pro se* parties. Many of them are low-income persons, although many are also persons with moderate income. Different judicial districts have made varying progress in assisting *pro se* litigants, including provision of forms and procedural information, particularly in family law cases. A case manager separate from the court clerks can be very useful, but cannot be employed in many cases because of a shortage of funds. A case manager, when available, performs a screening and advice function for litigants without lawyers.

#### **Present Strengths and Weaknesses:**

The principal strength in existing efforts to reach out to low-income persons and assist litigants without lawyers is that many dedicated people are devoting substantial time and energy to achieve this important goal. The weakness of these efforts are: (i) a lack of uniformity, coordination and sufficient statewide dissemination of educational instruction and materials; (ii) a lack of a firm policy to support the furnishing of unbundled legal services and (iii) insufficiency in the volume of education of the public which is actually accomplished, largely because of inadequate funding. Forms standardization has been largely accomplished in the domestic relations area, but is not as well advanced in other areas.

#### **Goals and Progress:**

There are wide variations throughout the United States in the ethical opinions of courts and bar associations concerning unbundled legal services. The Committee on Pro Se Litigants of the Judicial Advisory Council recommended in Exhibit 4B that the judiciary and organized bar in Colorado take concrete action to encourage unbundled services, including:

1. Adoption of rules of civil procedure permitting entries of appearance for limited purposes and the withdrawal of counsel once that purpose has been served.
2. Support of the Colorado Bar Association Ethics Committee Opinion finding that the Colorado Rules of Professional Conduct permit unbundling of services
3. Specific consideration by the Colorado Supreme Court of issues involved in the ghost-writing of pleadings and briefs.

The Committee on Pro Se Litigants also recommended continuation and expansion of information available to *pro se* litigants and training of judges and court personnel to help judges deal with *pro se* litigants and court personnel to distinguish between providing helpful information and giving “legal advice.”

In addition to these steps, the following goals for removal of barriers should be pursued:

1. The development of uniform forms and procedures in courts throughout the state, so that instruction materials and forms used to improve self-help for low-income persons can likewise be uniform. The Supreme Court Administrator’s Office is working in this area, but much remains to be done. If the Colorado Supreme Court establishes the statewide and judicial district pro bono legal service committees recommended by the Judicial Advisory Council in Exhibit 3A, a potential exists for these committees to promote uniformity and ease of access for low-income persons not represented by attorneys.
2. Use of improved technology by the funded legal service programs and the private bar to distribute information electronically to low-income persons through centralized advice and referral carried out by trained persons with computerized network access to such information.
3. Preparation and use of audio-visual materials for the most important topics in community legal education.
4. Instruction and dissemination of materials in both English and Spanish.
5. Continuous coordination among state and local bar associations, judges, court administrative personnel and legal services programs to identify and overcome specific barriers to meaningful access to justice.
6. Expansion of existing programs encouraging lawyers to provide limited representation to clients engaged in litigation and not receiving full service by lawyers.
7. Implementation of a system to evaluate the utilization and effectiveness of these and other initiatives.

The goals listed here can only be accomplished through an effective partnership and

through additional funding, neither of which is presently in place. The Statewide Planning Group's service delivery committee has considered issues relating to community education; and the implementation of a technology plan will provide tools for progress in meeting the goals set forth. However, this committee is primarily composed of persons from legal service programs, and a more broadly based effort should be organized and carried forward by the State Court Administrator's Office and other interested parties.

**4. Do program staff and pro bono attorneys throughout the state receive the training and have access to information and expert assistance necessary for the delivery of high quality legal services? How can statewide capacities be developed and strengthened to meet these needs?**

**Present Structure:**

Until 1996 LSC funding in Colorado included an allocation of funds to the Colorado Coalition of Legal Services Programs ("CCLSP"), which provided technical assistance and staff training for the then existing four legal services programs providing legal services to low-income persons, as well as training for pro bono lawyers. CCLSP ceased operations when its funding ended. In response, the three LSC funded programs in the state formed a three-person committee in 1997 to review the need of the programs for state support and to make recommendations to the project directors. This committee was made up of the second highest ranking staffer in each of the programs. In May 1997, this committee made two recommendations that were adopted by the project directors. The first recommendation was to look at the possibility of standardizing and updating the technology used in the provision of legal services for all three programs. The second recommendation was to have a statewide training event that would address important substantive issues, especially those regarding recent and ongoing changes in welfare, LSC restrictions, and immigration law.

In January 1998, the three programs jointly sponsored a training event that addressed important substantive issues involving the new welfare laws, LSC restrictions and new immigration rules. The legal services programs have also provided in-house training and mentoring within each program.

The three programs made an effort to compensate for the loss of the state support center and the scarcity of funds available for training by working in collaboration with Continuing Legal Education in Colorado, Inc., which is operated under the sponsorship of the Colorado and Denver Bar Associations, and with other agencies in Colorado to obtain free or nominal cost training for their staffs. Even with no or low cost registration, training requests are carefully scrutinized to be sure the training is appropriate to the specific needs of the staff and offices. Since most CLE trainings are held in the Denver metropolitan area where both law schools and most CLE providers are located, the cost of travel, per diem and time out of the office are higher for CRLS because of its rural service area.

The National Institute for Trial Advocacy – Rocky Mountain Regional group and the Institute for Advanced Legal Studies at the University of Denver College of Law have provided free slots to all of the training events sponsored by each group including the prestigious 10-day intensive Rocky Mountain Regional Trial Advocacy course sponsored by NITA in August every year, as well as the 1-3 day seminars on Depositions and Evidence sponsored by NITA.

The Institute for Advanced Legal Studies at the University of Denver College of Law has provided, at no cost or low cost (usually one-half or less of the registration fee), seminars on custody in domestic violence cases, elder law and expert witnesses. It has also provided free substantive training on disability and workers compensation law.

CLE in Colorado, Inc. has provided for free, or “cost of materials,” sessions on Social Security Disability Law, family law practice, unbundling legal services and the Internet. Additionally, staff members have attended, at a low fee, trainings sponsored by the Colorado Coalition against Domestic Violence.

Legal services staff have also had preliminary discussions with the directors of NITA, CLE in Colorado, Inc. and the Institute for Advanced Legal Studies regarding sponsoring and/or providing specialized training for legal services staff to help fill the gap left by the defunding of the state support centers. The directors of the CLE providers have agreed in principle that this should be one of their goals.

Staff from the three programs continue to participate in substantive law task forces (*e.g.*, public benefits, domestic relations, housing/consumer) that were organized originally by the state support center and are now coordinated by experienced staff from the three legal services programs. The task forces meet at least every three months to discuss issues of concern in substantive areas of law and assess current trends in cases and issues.

CLE of Colorado, Inc. offered over 115 video replays in its 1997-98 year and maintains an ever-growing library of handbooks and other materials, some of which relate to services often offered by pro bono lawyers. It also offers several programs annually for pro bono lawyers with substantially reduced registration fees. In 1997, it co-sponsored a statewide pro bono conference with the Colorado Bar Association.

Other CLE providers do not typically provide discounts for pro bono training, but some public interest entities, such as the Rocky Mountain Children’s Law Center, offer training for pro bono lawyers. In addition to formal training, there are periodic meetings of representatives of different programs involved in particular substantive areas, for example, public benefits, domestic relations, health, housing, etc. The Colorado Bar Association provides CLE training and liaison for programs by local bar associations. Legal service lawyers also attend national training events sponsored by the National Legal Aid and Defender Association, the Management Information Exchange, the American Bar Association and other national organizations.

### **Strengths and Weaknesses:**

There are many sources of training for both staff and pro bono lawyers. There is, however, a serious shortage of funding; and there is no continuing coordinated network of lawyers and interested groups coordinating training and support. The Colorado Coalition of Legal Service Programs sponsored training sessions while it was receiving LSC and other funding, but it is no longer in operation and no other entity has replaced it. The Western Regional Training Center, which gave assistance to the Colorado Coalition, also lost its Legal Services Corporation funding and no longer exists.

### **Goals and Progress:**

The goal in Colorado is to establish and maintain an adequately funded program which expands and coordinates the efforts of lawyers, judges and other interested groups in the encouragement, training and support of lawyers providing legal services to low-income persons. This would become even more essential if mandatory pro bono service is instituted, as is recommended in Exhibit 3A and discussed under Question 5 *infra*. Adoption by the Colorado Supreme Court of the recommendation in Exhibit 3B that committees be formed in each judicial district, along with a statewide monitoring committee, to address the legal needs of low and moderate income persons in Colorado would bring into existence an organizational framework of statewide and local standing committees which could coordinate

and, if funding is available, increase the amount of training available to pro bono lawyers.

The Colorado Bar Association Board of Governors will consider a proposed 10% surtax on CLE programs to help fund and subsidize attendance at CLE programs for pro bono attorneys. A recommendation may be made that the 45 hours of CLE training required of all Colorado lawyers over a three year period should include a minimum number of hours of pro bono training. With the funding which might be received from a surtax or other sources, CLE in Colorado, Inc. would be able to survey the needs for pro bono training, institute regular coordination with other groups interested in pro bono legal services, and provide needed additional training. None of these steps can be assigned a definite timetable at this time.

**5. What is the current status of private attorney involvement in the state? What statewide efforts can be undertaken to increase the involvement of private attorneys in the delivery of legal services?**

**Present Structure:**

Rule 6.1 of the Colorado Rules of Professional Conduct provides in part that “a lawyer should render public interest legal service,” but contains no suggested amount to be provided and no provision for enforcement. The present structure for delivery of volunteer legal services to low-income persons is described on page 4, *supra*.

**Present Strengths and Weaknesses.**

There are many lawyers throughout Colorado providing legal service to low-income persons. However, the decline in federal funding for legal service programs has not been offset by an increase in the number of Colorado attorneys willing to provide pro bono representation. Rule 6.1 provides no more than encouragement to such representation. In some rural counties, the percentage of private attorneys performing pro bono service is fairly high, but in metropolitan counties, and particularly Denver, the percentage is quite low. There is a large gap between the present need for legal services for low income persons in Colorado and the services which are provided through a combination of pro bono legal service and legal services performed by the LSC-funded programs. As an example, Colorado Rural Legal Service recently found itself required by funding reductions to close offices in Montrose and Trinidad, which affect not only its own service but also a local bar association’s pro bono program for which the Montrose office has supplied intake service.

**Goals and Progress:**

We described on pages 4-5, *supra*, some of the pro bono programs presently in existence, as well as the formation and activity of the Legal Services/Pro Bono Subcommittee of the Judicial Advisory Council. In brief summary, the Subcommittee’s recommendations in Exhibit 3A were:

1. Support and improve funding for legal services programs for low-income persons from both public and private sources.
2. Make pro bono service mandatory for all lawyers with limited exceptions, with a minimum of 25 hours per year, with at least half that amount devoted to legal services to low-income persons, and allowing a lawyer “buy-out.” An alternative recommendation is to adopt the American Bar Association Model Rule 6.1, which contains an aspirational provision for 50 hours per year of pro bono service, a substantial majority of which is to be in representation of low-income persons.

3. Institute annual pro bono hours reporting by all lawyers to the Colorado Supreme Court.
4. Increase the role of judges in encouraging pro bono participation by lawyers, including establishment of a statewide committee and standing committees led by judges in each judicial district of the State to increase and enhance pro bono legal services.

At a meeting in June 1998, the Judicial Advisory Council recommended implementation of Recommendations 1 and 4 by the Colorado Supreme Court. It favored Recommendations 2 and 3 by informal straw votes, but decided to delay further action on each of them until early in 1999, in order to provide an opportunity to inform members of the bar and to receive their comments before taking further action. We cannot predict at this time whether either or both of these recommendations will be adopted. There are no states of which we are aware which require mandatory pro bono service statewide, but Florida requires reporting of compliance or noncompliance with an aspirational rule, which has a standard of 20 hours of pro bono service to low-income persons or a contribution of \$350 to an organization providing such service. The constitutionality of this rule was upheld in Federal District Court and on appeal in *Schwarz v. Kogan*, 132 F.3d 1387 (11<sup>th</sup> Cir. 1998). Whether or not mandatory service or reporting is implemented, the consideration of these recommendations is likely to stimulate discussion in the legal profession and increase statewide awareness of the need for more pro bono legal services to low-income Coloradans.

The Colorado Bar Association Board of Governors discussed Recommendations 2 and 3 at a meeting in mid-September, 1998. The mandatory pro bono proposal met with some opposition in the discussion. A series of meetings are being scheduled throughout the state to discuss these recommendations, with the intention that a statewide Bar position will be determined and given to the Colorado Supreme Court in the first half of 1999.

The Statewide Planning Group is hopeful that the Colorado Supreme Court will act favorably on the fourth recommendation concerning greater judicial involvement in encouraging lawyers to perform pro bono service. The recommendation to establish pro bono committees in each judicial district and statewide follows a rule in Florida which was apparently helpful in increasing the amount of pro bono service performed in that state. The Judicial Advisory Council recommendation to modify the Code of Judicial Conduct or to issue a Chief Justice Directive setting forth specific activities in which judges could permissibly engage to encourage lawyers to perform pro bono service would perhaps be the first such action in the United States. If this recommendation is adopted, it would enable judges to know and act upon the ways in which they could encourage lawyers to do more pro bono work. *See also* discussion of the Final Report of the Judicial Advisory Council's Committee on Pro Se Litigants (Exhibit 4B) on pages 19-20, *supra*.

6. **What statewide financial resources are available for legal service to low-income persons within the state? How can these resources be preserved and expanded?**

#### **Present Structure:**

The current status of private and public funding for legal services to low-income persons in Colorado is summarized on pages 5-9, *supra*. Essentially every potential source of funding sought or obtained in other states has been explored, and the more promising possibilities have been actively pursued. The result has been an increase in private funding, with total failure to obtain any state or increased local government funding.

### **Present Strengths and Weaknesses:**

The funding strengths in Colorado are principally in the conscientious efforts of lawyers in Colorado, with backing from bar associations and the Colorado Supreme Court, to develop and expand distributions of funds to legal service programs through COLTAF and the Legal Aid Foundation of Colorado, and continued United Way support in some areas of the state. COLTAF and Legal Aid Foundation funds are raised on a statewide basis and disbursed statewide based on poverty populations in the areas served by each federally funded program, thereby tending to equalize access to justice for low income persons throughout the state. The weaknesses are that no state funding is being provided, that there is little local public funding, that there is no statewide funding vehicle, such as an increase in lawyer registration fees, and that voluntary financial support has been almost entirely limited to lawyers, without significant contributions from the community at large. Without these elements, funding cannot be made adequate to meet the needs of low-income persons in the state.

### **Goals and Progress:**

The objective set by the Statewide Planning Group and its funding committee is to fully replace the reductions of funding from the Legal Services Corporation during the past four years. Ultimately, a higher goal may have to be established, but that does not appear realistic at this time. The net increase in funding from private sources since 1994 has been only about \$300,000, which is only a small fraction of the reductions in LSC funding during the same period.

**Analysis and Comparison of Statewide Funding Successes in Other States**  
During the last few years, many states have been successful in obtaining some form of new statewide funding to replace lost LSC funding for the legal services programs. This cannot be accomplished in Colorado without funding from the state either in the form of a new filing fee, a surcharge on an existing filing fee, a surcharge on fines, an appropriation from the state general fund, or other similar state funding mechanism. To date, 34 states have state funding for civil legal services for low-income persons. The only other new funding source that has been identified that can generate a sizable amount of income is an attorney registration fee increase, which has been approved by state supreme courts in Minnesota and Ohio. The Colorado Supreme Court has not favored such an increase. Even if obtained, such an increase would almost certainly be insufficient to replace lost LSC funding.

Because state funding tends to come in large amounts, usually \$1 million or more, legal services providers in states with state funding are significantly better off than those in states without it. State funding translates directly into increased access to justice for low income residents of those states, even though they still do not receive enough revenue to do everything that is required. When LSC funding was a significantly larger portion of the legal services funding pie, states were less unequal in their ability to meet the civil legal services needs of low-income persons. A new and increasing inequality is developing among the states. Unfortunately, Colorado has moved toward the low end in terms of its ability to meet the needs of poor people with civil legal problems. Colorado finds itself in this unenviable position, at least in part, due to two important factors - the TABOR Amendment and a legislature that has been so resistant to meeting the needs of the legal and judicial system that even modest judicial pay raises have been funded with court filing fee surcharges rather than general fund appropriations.

Information from the states that have successfully secured new statewide funding suggests that a common denominator for success has been intensely visible and energetic, leadership and coordination from the state's highest court and the state bar association. Michigan, Massachusetts, Minnesota, and, in particular, Washington have been leaders in their efforts to obtain additional funding. Generally, this leadership and coordination have not related



solely to funding matters, but to the entire effort to plan for effective, adequate access to justice, because funding does not develop in a vacuum. Which entity plays the role of overall leader in this kind of effort varies somewhat from state to state. However, the most effective systems have planning and strategy groups authorized and established by either the state supreme court or the state bar, with the active support and full participation of the IOLTA program, any other statewide funding entities and the legal services providers. Each of these entities provides leadership from both volunteers and staff that form the nucleus of the coalition that makes everything happen. One entity provides a staff person for whom access to justice is the primary focus of his/her job. In addition, each of the entities provides the time of a staff person committed to the process and able to serve effectively as a generator of ideas and sounding board/support system for the other members of the group. The work is ongoing, not just in the months during a legislative session. Who the primary person is and where he/she is employed varies from state to state, and, in some states, has moved from one entity to another over time. This kind of organized continuous staff support is essential to success in increasing funding.

As a result of the experiences of the Planning Group's funding committee with the Colorado legislature in the past few years, the committee believes that, in order to obtain any statewide funding, it will be necessary to secure the leadership and commitment of both the Colorado Supreme Court and the Colorado Bar Association ("CBA"). While both the Court and the CBA have provided significant resources to the efforts of the statewide coalition (i.e. CBA lobbyist, resolutions from the supreme court and judicial associations), and CBA leaders have visibly supported the effort, the next step requires an integrated, focused and sustained effort by those two institutions as well as those who have worked together in the past. The committee has identified the following steps for consideration, in addition to the continuation of past efforts by the Legal Aid Foundation, the legal services providers, the domestic violence prevention community and others. A key component to any future effort will be to identify the individuals and institutions who will accept responsibility for implementing all or part of these suggestions:

- Initiate and continue discussions with the Colorado Supreme Court and the CBA to establish the best means to secure statewide funding and develop the necessary leadership for implementation. This effort might include support for a Supreme Court-mandated attorney registration fee, a district court filing fee surcharge or a line item for legal services within the State Judicial Branch budget.
- Explore options for the assignment or hiring of a skilled, experienced, and high level staff person to manage and coordinate efforts to secure statewide funding.
- Assess the current coalition of various interest groups and solicit new ideas and input from these groups.
- Identify and convene leadership from the business community, the non-profit community and the law enforcement community to address the funding crisis and mobilize support from persons other than lawyers and the judiciary.
- Develop and coordinate a media campaign to enhance public awareness and to create a broad base of support for access to justice. This effort would include meetings between the CBA, newspapers and broadcast media.
- Renew the effort to secure statewide funding with the leadership of the Colorado legislature. As a result of term limits, the legislature will turn over by as much as one-third in January 1999. The new leadership must be approached and educated as soon as its membership has been determined.

**7. Where there are a number of LSC-funded programs and/or the presence of very small programs, how should the legal services programs be configured within the state to maximize the effective and economical delivery of high quality legal services to eligible clients within a comprehensive, integrated delivery system?**

Colorado has three LSC-funded programs, none of which are “very small programs.” These programs have engaged in a continuous process to explore and implement the most effective and economical methods for providing high quality legal services to clients. They are making progress toward working more closely together to better serve eligible clients. The Planning Group is aware of the strengths of each Colorado program, as well as the weaknesses in some areas. Efforts thus far have been to build upon those strengths to improve services while minimizing and/or correcting the weaknesses. These efforts are continuing. Most recently a joint committee with representatives from the leadership of the program, and their executive directors and staff began meeting in early September, 1998, to discuss and consider the benefits and feasibility of merger or consolidation. However, it is the view of one or more of the existing programs that the most appropriate first step is to reach agreement among the programs and their Boards of Directors upon the characteristics of a “comprehensive integrated delivery system,” so that if a merger takes place, the major elements of the organization, purposes, priorities and operations of the resulting entity will have already been agreed upon. This process of reaching agreement is ongoing, and considerable progress has been made. By early 1999, the programs hope to reach agreement whether a merger or consolidation will provide additional benefits in the form of reduced cost and more efficient and effective service.

**CONCLUSION:**

The Statewide Planning Group, whose members are listed in Exhibit 5, has conscientiously participated in the planning process, and has approved the filing of this Report. Much progress has been made toward the planning and implementation of a substantially more comprehensive and integrated service delivery system than has historically existed in Colorado. Progress in securing state governmental funding and increased local governmental funding, and in increasing pro bono service by members of the bar has been on a slower track, but strong efforts continue on both fronts. The overall objective continues to be economical and effective delivery of high quality legal services to eligible clients within an integrated delivery system that addresses their most pressing needs.

The primary contact person for this Report will be David Butler, Esq., Suite 3200, 555 17<sup>th</sup> Street, Denver, CO 80202; telephone: (303) 295-8172; fax: (303) 295-8261. The secondary contact person will be Jonathan D. Asher, Esq., 1905 Sherman Street, Suite 400, Denver, CO 80203; telephone: (303) 866-8399; fax: (303) 830-7860, who will file this report electronically.

Respectfully submitted,

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David Butler, Chair  
for the Statewide Planning Group

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Jonathan D. Asher, Director  
for Legal Aid Society of Metropolitan Denver

Mario H. Rivera, Director  
for Colorado Rural Legal Services

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Edward L. Arcuri III  
for Pikes Peak/Arkansas River Legal Services

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